THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, 1st day of August,2007

W.P.No.31196 of 1998

Between:-

V. Chiranjeevi … Petitioner

and

The Chief Security Commissioner,
Railway Protection Force,
South Central Railway,
Rail Nilayam, Secunderabad
and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.31196 of 1998

ORDER:

This Writ Petition is filed seeking a Mandamus declaring the action of the respondents in not promoting the petitioner, in spite of his selection to the post of Head Constable/Driver Grade II vide Proceedings in Force Order No.218/95 (X/P.629/Fire/HC/Tech.Vol.II) dated 28-11-1995 of the 1st respondent and completion of minor punishment, as arbitrary and illegal and consequently to direct the respondents to promote the petitioner to the post of Head Constable/Driver Grade II, if necessary, by reverting the 4th respondent, forthwith, with all consequential benefits.

It appears, petitioner was appointed as a Constable in Railway Protection Force with effect from 19-11-1979 and was also promoted to the post of Head Constable/Driver Grade III vide Force Order No.50/84 (X/P.529/3/F) dated 16-3-1984 of the 1st respondent. According to the petitioner, he was senior to 4th respondent as per the seniority list in the cadre of Head Constable/Driver Grade III. Respondent No.1 vide his Proceedings dated 20-6-1995 invited readiness of the eligible candidates for promotion to the post of Head Constable/Driver Grade II. There were, in all, 3 posts meant for open category. Respondent No.2 prepared a list of eligible candidates in the order of seniority and alerted them for the test/selection trade test vide Proceedings dated 27-6-1995. Petitioner also appeared for the interview and selections held on 24-7-1995 and 25-7-1995 under Rule 70 of the R.P.F.

Rules,1987 and according to him, he was selected to the post of Head Constable/Driver Grade II by a duly constituted selection committee. Further, respondent No.1 had issued Proceedings vide Force Order No.218/95, dated 28-11-1995 empanelling him to the post of Head Constable/Driver Grade II. Respondent No.2 also issued Divisional Order No.178/95, dated 5-12-1995 intimating the petitioner that he was selected to the post of Head Constable/Driver Grade II and his promotion will be subject to his being free from DAR/SPO/Vigilance cases and not undergoing punishments.

In the meanwhile, petitioner was issued with a minor penalty charge sheet vide Proceedings dated 16-5-1995 and after calling for explanation from him, he was imposed with a minor penalty of withholding of increment for a period of 6 months vide Divisional Order No.116/95, dated 28-6-1995. According to the petitioner, one K.Seetharama Raju filed a Writ Petition being W.P.No.9038 of 1996 before this Court challenging the action of the official respondents in not considering his representation for fixation of correct seniority in the cadre of Constable and in W.P.M.P.No.11135 of 1996, a direction was given to the respondents therein to consider his representation for fixing his correct seniority. In pursuance of the said interim orders, the representation of K.Seetharama Raju was considered and was placed above the petitioner and was also promoted to the post of Head Constable/Driver Grade II vide Proceedings in Divisional Order No.17/97, dated 21-2-1997 and subsequently the said Seetharamaraju withdrawn the Writ Petition. Therefore, it necessitated for the petitioner to challenge the promotion order of the 4th respondent. According to the petitioner, 4th respondent, though belongs to Scheduled Tribe community, there was no reserved vacancy available in the Notification dated 20-6-1995 issued by the 1st respondent and now it is not open for the 1st respondent to treat one of the vacancies notified

to have been earmarked for S.T. category and convert the same into S.C. point. Respondent No.4 has to be reverted in view of the restoration of seniority of K.Seetharama Raju, but the petitioner cannot be deprived of his promotion contrary to law, particularly after completion of undergoing punishment. The action of the respondents in not giving promotion by effecting Force Order No.218/95, dated 28-11-1995 of the 1st respondent as arbitrary and illegal.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner. It is admitted that there were three resultant chain vacancies of Head Constable/TPO-cum-Driver Grade II in the year 1995. The roster points to be filled up were 18, 19 and 20 in the 40-point Roster. As per the said 40-point Roster, the points 18,19 and 20 were to be filled up by OC candidates. Therefore, an alert notice was issued vide letter dated 20-6-1995 alerting 6 candidates of Grade III Drivers according to seniority. In fact, the candidates were to be called for selection at 1:3 ratio, but only 6 candidates were available. The names of the candidates alerted for selection are as under:

1. V. Chiranjeevi OC (petitioner)
2. K.S.R. Raju OC
3. R. Nagesam SC
4. P. Ramachandra Reddy OC
5. G. Venkata Reddy OC
6. O. Yesaiah SC

Thereafter, it was noticed that there were 2 S.T. backlog points, which were not filled up for want of eligible incumbents in S.T. category. Therefore, roster points, which were not filled up were 4 and 17. As such, a proposal for de-reservation of 2 vacancies reserved for S.T. against roster points 17 and 4 was sent to CPO/SC vide letter dated 27-6-1995, but the CPO/SC did not communicate sanction of the competent authority. Hence, the 1st respondent decided to interchange 1 S.T. backlog vacancy with S.C., as the 4th respondent

(3rd candidate in the alert notice) and O.Yesaiah (6th candidate in the alert notice) were available in SC community only. Further, in the meanwhile, one Y.Eswara Reddy, Head Constable/TPO-cum-Driver Grade II/Fire was rendered surplus due to closure of 4 Mobile Fire Stations in 2nd phase manpower planning vide Memorandum dated 23-7-1993 was transferred as Head Constable/Driver Grade II from Fire Branch to the Executive Branch vide Force Order No.104/93, dated 30-7-1993. He again went back to Fire Branch, vide Force Order No.80/95, dated 8-5-1995 on his own request. Thus, there were only 2 vacancies available in the category of Head Constable/Driver Grade II/Fire, which were to be filled up by selection. The first vacancy was meant for OC and other vacancy for ST (interchanging point from ST with SC). As the post of Head Constable/TPO-cum-Driver was classified as safety category and it was quite essential and important since the fire engine had to be taken from fire station to the place of fire, the vacancies would not be kept unfilled. Therefore, the selection was held for the said 2 vacancies and panel was declared on 28-11-1995 vide Force Order No.218/95 duly placing the following Head Constables/Drivers Grade III:

1. Shri V. Chairanjeevi	OC (petitioner)
2. Shri R. Nagesham	SC (4th respondent)

While the matter stood thus, one K.Seetharama Raju, Head Constable/TPO-cum-Driver Grade II filed Writ Petition No.9038 of 1996 before this Court claiming seniority over the petitioner in the post of Constable, he being elder to the petitioner by age and both were appointed under one and the same Order. Pursuant to the Orders of this Court, the seniority position of K.S.R. Raju was reassigned and placed above the petitioner; as a result, the name of the petitioner was deleted from the panel declared vide Force Order No.218/95, dated 28-11-1995 and K.S.R.Raju was empanelled vide Force Order

No.206/96, dated 6/9-12-1996.

Heard both sides and perused the impugned Order and other material made available on record.

The facts are not much in dispute as to the appointment of the petitioner as well as K.Seetharama Raju on one and the same day. It is also not in dispute that K.Seetharama Raju was elder in age, whereas the petitioner was shown as senior to him. Under those circumstances, when the name of K.Seetharama Raju was shown below the petitioner, Seetharama Raju filed Writ Petition No.9038 of 1996 and in view of the interim directions to consider the representation filed by Seetharama Raju in W.P.M.P. No.11135 of 1996, his case was considered according to Rules and he was placed above the petitioner in the seniority list of Constables. There is a rule governing the service conditions of the petitioner that whenever two or more persons are appointed under one and the same recruitment, the seniority of such persons has to be arranged as per their date of birth. The senior will be given placement above the junior in age. It is also not in dispute that the petitioner, K.Seetharama Raju and the 4th respondent were selected and kept in the panel. But, in the meanwhile, since one Y.Eswara Reddy, who was rendered surplus due to closure of four Mobile Fire Stations vide Memorandum dated 23-7-1993 was transferred as Head Constable/Driver Grade II from Fire Branch to the Executive Branch vide Force Order No.104/93, dated 30-7-1993. Of course, he again went back to Fire Branch, on his own request, vide Orders dated 8-5-1995. But, in view of posting of Eswara Reddy in the Department, there were only 2 vacancies of Head Constables/Drivers Grade II available. In view of the revision of the seniority and in view of the fact that K.Seetharama Raju was placed above the petitioner in the seniority list after considering his representation as per the directions of this Court and only two

vacancies remained to be filled and one vacancy out of 2 were converted, since backlog vacancies at roster point Nos.4 and 17 were not filled up earlier, 4th respondent was appointed against the said vacancy and petitioner was denied his promotion, though he was selected. Apart from this, it appears, petitioner was also undergoing punishment of stoppage of one increment for a period of 6 months vide Divisional Order No.116/95, dated 28-6-1995 i.e. as on the date of selection. For these two reasons, petitioner appears to have been denied promotion to the post of Head Constable/Driver Grade II.

It may be reasonable to accept the contention of the respondents that one Eswara Reddy was transferred from the post of Head Constable/Driver Grade II from Fire Branch to Executive Branch and, therefore, one vacancy was to be reduced from out of notified 3 vacancies. But, this appears to be not factually correct. Even according to the counter filed by the respondents, at paragraph 4.3 it is stated that Eswara Reddy was transferred as Head Constable/Driver Grade II vide Force Order No.104/93, dated 30-7-1993 to Executive Branch and he went back to Fire Branch vide Force Order No.80/95, dated 8-5-1995 on his own request. Therefore, the contention of the respondents 1 to 3 that there were only two vacancies and as such, petitioner could not be accommodated in view of revision in the placements in the seniority of the petitioner and K.Seetharama Raju cannot be believed.

Further, the official respondents have bungled the whole thing. It is the case of the official respondents that the vacancies of S.T. category against roster points 4 and 17 were not filled up and they are backlog vacancies. It is always open for the Department to notify such vacancies and fill up with suitable candidates. Instead of doing that, one of the vacancies notified which are unreserved has been shown as S.T. vacancy and converted it as S.C. vacancy for which, of

course, there was no sanction communicated from the competent authority and the 4th respondent was appointed against the said vacancy treating it as SC/ST vacancy. All these would show that respondents 1 to 3 have not handled the matter in a fair manner as required under the law. Further, the petitioner had completed punishment of stoppage of one increment for a period of 6 months by December,1995. Firstly, reducing one vacancy in the Executive Branch in the guise of transfer of Eswara Reddy does not arise, since Eswara Reddy sought transfer even before finalization of selections. Secondly, even if the seniority is revised and K.Seetharama Raju had marched over the petitioner, it must be deemed that the petitioner was at Sl.No.2 and K.S.R.Raju was at Sl.No.1 and the 4th respondent was at Sl.No.3. Thus, even assuming that there were only 2 vacancies, K.S.R.Raju and the petitioner should have been appointed against those vacancies. Thirdly, the conversion of one of these 3 vacancies meant for unreserved category could not have been attempted to, since the roster points 4 and 17 were already available. Further, there was no sanction from the competent authority to convert the third vacancy to ST and since ST candidates are not available, it was again converted to S.C. only to accommodate the 4th respondent. Thus, the whole exercise made by the official respondents is arbitrary, illegal and liable to be declared as such.

However, learned counsel for the respondents 1 to 3 stated that subsequently the petitioner was also promoted to the post of Head Constable/Driver Grade II. Therefore, instead of disturbing the promotion of the 4th respondent to the post of Head Constable/Driver Grade II already made, I deem it appropriate to direct the official respondents to treat that the petitioner has been promoted to the post of Head Constable/Driver Grade II on par with K.Seetharama Raju, and the 4th respondent as per his original seniority in the cadre of

Constable, and extend all consequential benefits, notionally, such as fixation of salary etc.

Accordingly, the Writ Petition is disposed of. No order as to costs.

01-8-2007

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